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Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The death penalty constitutes torture: The need for moratoriums on sentencing

The world is evolving its view on use of the death penalty, and countries are changing and abolishing their use of capital punishment. As of May 2013, there are 140 countries that have abolished executions by law or practice compared to 1977 when only 16 countries that had abolished the death penalty. The international community is quickly deciding use of the death penalty constitutes torture and is moving towards abolition.[1]

Use of the death penalty constitutes torture, cruel, inhumane and degrading treatment in at least two ways: the death row phenomenon and the methods of execution used. The torture caused by both of these are clearly prohibited by Article 7 of the ICCPR.[2] Prohibitions of torture are found in numerous international treaties, such as the European Convention on Human Rights,[3] the African Charter on Human and Peoples Rights,[4] and the Convention Against Torture. Prohibition of torture has truly become a preemptory norm. The U.N. Special Rapporteur on Torture has acknowledged an evolving international norm that use of the death penalty is a per se violation of the prohibition against torture and other cruel, inhuman or degrading treatment, and that the death row phenomenon itself violates Article 7 of the ICCPR.[5]

The death row phenomenon is acknowledged in international jurisprudence, and produces severe mental trauma and physical deterioration in prisoners under sentence of death.[6] The circumstances to create death row phenomenon include the lengthy anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact, and poor physical conditions. In *Soering v. United Kingdom*, the European Court of Human Rights ruled that extraditing the applicant back to the U.S., where he would face the death penalty, amounted to inhuman and degrading punishment because of the death row phenomenon he would suffer.[7]

The Inter-American Commission on Human Rights has found that conditions on death row violate the American Convention on Human Rights.[8] In *Aitkin v. Jamaica* the commission found that the conditions petitioner suffered during 4 years on death row failed to respect his physical, mental, and moral integrity and constituted inhumane treatment in violation of the Convention.[9] In *Hilaire v. Trinidad and Tobago*, the Inter-American Court of Human Rights held that the death row phenomenon was a cruel, inhuman, and degrading treatment, and was characterized by a prolonged period of detention while awaiting execution.[10] The Special Rapporteur notes that solitary confinement is the

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[1] Amnesty International, *Death Penalty Facts and Trends*, found at: http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-trends

[2] International Covenant on Civil and Political Rights, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

[3] European Convention on Human Rights, Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[4] African Charter on Human and People's Rights, Article 5: "…torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

[5] UN General Assembly, *Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, August 9, 2012, *A/67/279, found at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement. (hereinafter *Interim Report*).

[6] Patrick Hudson, "Does the death row phenomenon violate a prisoner's rights under international law?", *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

[7] *Soering v. The United Kingdom*, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989, found at: http://www.unhcr.org/refworld/docid/3ae6b6fec.html.

[8] *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C. H.R., Doc. 5 rev. 1, October 21, 2002, found at: http://www1.umn.edu/humanrts/cases/55-02.html.

[9] Aitken v. Jamaica, Case 12.275, Report No. 58/02, Inter-Am. C.H.R., Doc. 5. Rev. 1 at 763 October 21, 2002, found at: http://www1.umn.edu/humanrts/cases/58-02.html.

[10] Judgement of 21 June 2002 in *Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago*, Series C, No. 94, para. 167.

prevailing norm for death row inmates, and that "[s]olitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or even torture."[11]

Egregious examples of prolonged death row sentences include N.I. Sequoya, who is an inmate at San Quentin State Prison in California, USA. Sentenced to death in March of 1992, he has now spent over 20 years on death row. It took California 5 years to appoint counsel, and another 10 years to reconstruct lost transcripts of his trial. These facts and delays were acknowledged by the IACHR in an admissibility decision on March 2012.[12] Over 20 years on death row has caused N.I. Sequoyah to suffer both physically and mentally. In Japan, Okunishi Masaru, has spent more than 40 years on death row and recently had his seventh request for a retrial denied. Japan has the longest serving death row inmate in the world, Hakamada Iwao, who was convicted in 1968. Iwao has suffered severe mental illness from being in solitary confinement on death row for over 40 years.[13]

In addition to the death row phenomenon, the executions themselves constitute torture. There is no method of execution that comports with international standards of humanity and dignity. The European Court of Human Rights found in *Al-Saadon & Mufdhi v. United Kingdom* that any form of execution amounts to torture because all forms involve physical pain, in addition to intense psychological suffering awaiting death.[14] The Human Rights Committee found that "public executions are ... incompatible with human dignity."[15] Conversely, secret executions violate the rights of the convict and his/her family to prepare for death.

Many countries believe lethal injection is the most humane form of execution. Recent research suggests that in fact the person is simply paralyzed but still able to feel excruciating pain while slowly dying. These new findings have resulted in many U.S. states to suspend executions.[16] However, the Supreme Court of the United States has held that use of lethal injection is constitutional and does not amount to cruel and unusual punishment, despite a case where a man took 34 minutes to die after two doses of the poison.[17] HRA commends the European Union and private companies who have refused to supply the U.S. with the drugs used in lethal injection. Unfortunately, U.S. states have begun experimenting on inmates with untested drugs, and currently 4 different states are trying 4 different drugs for 2014. On January 16, 2014, one such experiment resulted in Dennis McGuire struggling physically for breath, gasping loudly, and choking during an execution which lasted 15 minutes.[18]

The United Nations High Commissioner for Human Rights has suggested that hanging, as a matter of law, is contrary to the ICCPR.[19] Despite proof that hanging is painful and violates human dignity, eight men have been executed by hanging in Japan within the past year.[20] This is a huge step backward for Japan who just a few years ago seemed to be moving toward abolition. All of these executions were done in secret, with the inmates not knowing until the morning

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[11] Supra note 5.
[12] N.I. Sequoyah, Report No. 42/10, Inter-Am. Commission of H.R., found at: www.cidh.org/annualrep/2010eng/USAD120-07EN.doc.
[13] Amnesty International, *Japan: Death row inmate's retrial rejection is "travesty of justice"*, found at: http://www.amnestyusa.org/news/news-item/japan-death-row-inmate-s-retrial-rejection-is-travesty-of-justice.
[14] Judgment 2 March 2010 in *Al-Saadoon & Mufdhi v. United Kingdom*, application No. 61498/08, para. 99.
[15] International Bar Association, *The Death Penalty under International Law: A background paper on the IBAHRI Resolution on the Abolition of the Death Penalty*, May 2008.
[16] Suzanne Goldenberg, *America Turns its back on Death Penalty after botched lethal injection of killer*, January 9, 2007, found at: http://www.guardian.co.uk/world/2007/jan/10/usa.suzannegoldenberg.
[17] *Baze et al. v. Rees, Commissioner, Kentucky Department of Corrections et al.* of 16 April 2008, case No. 07-5439.
[18] Death Penalty Information Center, *Problems Arise as Ohio Tries New Execution Procedure*, found at: http://deathpenaltyinfo.org/problems-arise-ohio-tries-new-execution-procedure.
[19] Supra note 5.
[20] The Guardian, *Japan condemned for "secret" executions*, found at: http://www.theguardian.com/world/2013/dec/12/japan-condemned-secret-executions.

of that they would be executed and their families notified only after the fact. It was reported that over 60 people have been executed by hanging within a month during 2013 in Iran.[21]

Human Rights Advocates (HRA) commends the General Assembly's call for moratoriums on executions in previous year's resolutions,[22] but the time has come for moratoriums on death penalty sentences. Allowing inmates to sit even longer with death sentences, not knowing when they will be executed, only exacerbates the torture caused by the death row phenomenon. Also, states that were abolitionist by practice may revert back to executing people already given death sentences, as India[23] and Pakistan[24] have both recently done.

HRA urges the Human Rights Council to urge States to:

- Enact moratoriums on death penalty sentences.
- Begin a dialogue about the death penalty within their individual countries.
- Adhere to international human rights standards of human dignity by instituting alternative methods of punishment.
- Prevent torture caused by the death row phenomenon.

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[21] Human Rights Activists News Agency, *A Prisoner is Hanged in Gachsaran*, found at: http://hra-news.org/en/prisoner-hanged-gachsaran.
[22] U.N. General Assembly Resolution, *Moratorium on the use of the death penalty*, A/RES/62/149 (18 December 2007); A/RES/63[22]/168 (18 December 2008); GA/11041 (21 December 2010); GA/11331 (20 December 2012).
[23] Human Rights Watch, *India: Secret Hanging a major step back*, February 9, 2013, found at: http://www.hrw.org/news/2013/02/09/india-secret-hanging-major-step-back.
[24] Human Rights Watch, *Pakistan: Execution ends Moratorium on Death Penalty*, November 21, 2012, found at: http://www.hrw.org/news/2012/11/20/pakistan-execution-ends-moratorium-death-penalty.